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# In the Supreme Court of the United States

OCTOBER TERM, 1948

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No. 408

GEORGE ABRAHAM, *Petitioner*

v.

UNITED STATES OF AMERICA

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On Petition for a Writ of Certiorari to the United States  
Court of Appeals for the Sixth Circuit

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**BRIEF FOR THE UNITED STATES IN OPPOSITION**

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## **OPINIONS BELOW**

No opinions were rendered by the Court of Appeals<sup>1</sup> or the District Court.

## **JURISDICTION**

The judgment of the Court of Appeals was entered October 13, 1948 (R. 55). The petition for a

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<sup>1</sup> The Court of Appeals recited in its judgment of affirmance that it appeared to the Court "that there was sufficient evidence to support the verdict of the jury, and that there is no error on the record." (R. 55.)

writ of certiorari was filed November 12, 1948. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

#### QUESTION PRESENTED

Whether the evidence is sufficient to support petitioner's conviction of using the mails in furtherance of a scheme to defraud.

#### STATUTE INVOLVED

Section 215 of the Criminal Code (18 U.S.C., 1946 ed., 338) provided in pertinent part as follows:<sup>2</sup>

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, \* \* \* shall, for the purpose of executing such scheme or artifice or attempting so to do, place, or cause to be placed, any letter, postal card, package, writing, circular, pamphlet, or advertisement, whether addressed to any person residing within or outside the United States, in any post office, or station thereof, or street or other letter box of the United States, or authorized depository for mail matter, to be sent or delivered by the post-office establishment of the United States, or shall take or receive any such therefrom,

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<sup>2</sup> These provisions have been codified, after simplification, as 68 September 1, 1948, and appear in the new Title 18, U. S. C. 1341.

whether mailed within or without the United States, or shall knowingly cause to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such letter, postal card, package, writing, circular, pamphlet, or advertisement, shall be fined not more than \$1,000, or imprisoned not more than five years, or both.

#### STATEMENT

Petitioner was convicted on all four counts of an indictment returned in the District Court for the Eastern District of Michigan (R. 47-48). The indictment charged him and Loretta Abraham with using the mails in execution of a scheme to defraud by falsely representing to certain business firms that they had contracted for advertising and that the advertisements had been published (R. 1-3). Petitioner was sentenced generally to imprisonment for a term of four years (R. 48) and the conviction was affirmed by the Court of Appeals for the Sixth Circuit (R. 55).

The evidence for the Government may be summarized as follows:

On June 24, 1947, petitioner signed an application for the rental of office space at 139 Cadillac Square, Detroit, Michigan. He represented to the building manager that he was going to operate an advertising agency under the names "A & L Advertising Agency" and "Daily Ad News." (R. 4-5.) Petitioner had registered with the county

clerk for the purpose of conducting a business under those assumed names (R. 4, Pet. 12). The office was occupied from July 1, 1947, to December 31, 1947 (R. 5).

The building manager saw petitioner and his wife, Loretta Abraham, in the office on several occasions and was requested by petitioner to paint the office. On December 31, 1947, the manager saw petitioner on the premises and asked for the keys to the office. (R. 6.) The postman who delivered mail in the building and saw petitioner's wife almost daily was informed by her that, in addition to the A & L Advertising Agency, mail for petitioner, his wife and one Kenneth Abraham should be delivered at the office (R. 44). When the office was vacated on December 31, 1947, the notice of change of mailing addresses included petitioner, his wife, and the A & L Advertising Agency (R. 42).

On June 24, 1947, an application was made to the telephone company for installation of phone service at the office in connection with the business of A & L Advertising Agency and Daily Ad News. The applicant did not indicate that any prior service had been rendered in Detroit for this business and the sum of \$600 was paid to the telephone company as a deposit. Six phones were installed on July 2, 1947. One of the numbers listed for A & L Advertising Agency was Cherry 7980. The service was ordered discontinued as of December 30, 1947. (R. 7-8.)

On August 21, 1947, an account in the name of A & L Advertising Agency was opened at the National Bank of Detroit. Petitioner authorized his wife to sign checks on that account. On September 9, 1947, a second account was opened in the same bank in the name of the Daily Ad News. Petitioner's name appeared on the registration of the account but his wife was the only one authorized to sign checks on it. (R. 13.)

About the 10th or 15th of August, 1947, petitioner gave an order to the Abbé Press in Detroit to print 700<sup>3</sup> copies of a newspaper, the "Daily Ad News" (R. 13, 14), in tabloid size, to be used for advertising only (R. 35). These papers were to be identical in all respects except that they were to be divided into seven groups and a different day of the week was to be printed on the first page of the papers in each group. Thus, 100 papers would carry the day "Monday," 100 "Tuesday," and so on. (R. 14-15.) No date of publication appeared on any of the papers (R. 15). The papers were made up from material which was furnished to the printer by petitioner. Ninety percent of this material consisted of clippings of help wanted advertisements from other newspapers. (R. 35.) The "Daily Ad News" was printed as ordered, and was delivered C.O.D. to the A & L Advertising Agency about August 27, 1947 (R. 17).

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<sup>3</sup> The superintendent of the printing plant testified that the total order was 525 copies (R. 14).

On August 28, 1947, Thompson Products, Inc, a business concern in Detroit, received through the mail "invoice No. 2587" on which was printed "A & L Advertising Agency, 139 Cadillac Square, Detroit, Telephone No. Ch. 7980." This was the address and telephone number of the office for which petitioner had contracted (see pp. 3-4, *supra*). This invoice, which bore the date April 5, 1947, represented that \$124.74 was due from Thompson Products for help wanted advertisements during the period March 27 to April 2. It recited that the advertisements had been ordered by the "personnel manager," and the salesman for the agency was designated as "Mr. King." (R. 18.) Subsequently, Thompson Products received three other invoices bearing the same name, address and telephone number. One was dated July 17, 1947, and the other two, September 5, 1947. These invoices were for \$41.58, \$124.74 and \$41.58, respectively, purporting to represent charges for help wanted advertisements during various stated periods. (R. 19-20.)

An official of Thompson Products called the telephone number listed on the invoices and asked for proof of the advertisements. He received through the mails two sheets which contained advertisements bearing the name of his company. (R. 19.) Neither he nor the company's employment manager, who had charge of placing advertisements for help, had authorized A & L Adver-



tising Agency to run any advertisements for the company (R. 19, 33-34).

On August 28, 1947, the Northern Engineering Company, another business concern in Detroit, received through the mails an invoice headed A & L Advertising Agency at the same address and telephone number; the invoice, dated April 1, 1947, was for \$83.16 for insertions of help wanted ads during the period March 22 to March 28 (R. 23). It also carried a notation that the advertisements were ordered by a Miss Cuney through a salesman by the name of Gregg (R. 24). Miss Cuney, the office manager of the Northern Engineering Company, testified that she had never heard of the Daily Ad News or of Gregg and had never authorized the insertions (R. 23-24).

The Allied Plumbing and Heating Supply Company, Wayne, Michigan, received through the mails two invoices bearing the name of the A & L Advertising Agency, 139 Cadillac Square, Detroit, Telephone No. Cherry 7980 (R. 25). These invoices, dated September 5 and September 15, 1947, were for \$62.37 each as charges for help wanted advertisements during the periods August 29 to September 4 and September 6 to September 12, 1947 (R. 25-26). The vice-president of the company, whose name appeared on each invoice as having ordered the advertisements through a salesman, "Mr. Clark," testified that he had never heard of the Daily Ad News and had never had any

contact with A & L Advertising Agency (R. 25). He mailed two checks for \$62.37 each to the address noted on the invoices in payment of these claims (R. 25-26). Subsequently, the company received another invoice, bearing the same name, address and telephone number; this invoice was dated October 10, 1947, and was for \$62.37 for advertisements during the period September 13 to September 20, 1947. It listed the vice-president of the company by name as having ordered the insertions. This claim was not paid. (R. 27.)

The Horst Manufacturing Company, Belleville, Michigan, received through the mail a statement bearing the name of A & L Advertising Agency of 139 Cadillac Square, Detroit, Telephone Cherry 7980 (R. 29-30). The envelope was postmarked October 14, 1947 (R. 29). This invoice was for \$41.58 for help wanted advertisements during the period October 1 to October 7, 1947, and stated that they were ordered by a Mr. Underdown and that the salesman was "Mr. Hall." Mr. Underdown, the official who placed advertisements for the company, testified that he had not authorized any advertisements by the A & L Advertising Agency or by anyone named Hall. (R. 30-31.) The claim was not paid (R. 30).

Other invoices bearing the same name, address and telephone number of the A & L Advertising Agency were received by the Eager Restaurant, Howell, Michigan (R. 31-32), Motor State Prod-

ucts, Inc., Ypsilanti, Michigan (R. 40), and the Huron Grey Iron Foundry, Ypsilanti, Michigan (R. 37). The owner and operator of the restaurant and the employee who had full charge of placing advertisements for the Motor State Products Company testified that the advertisements had never been ordered. The bills were not paid. (R. 32, 40.) The general manager of the Foundry testified that he was certain that he had not placed any order for advertisements with A & L Advertising Agency but paid the invoice because he thought he had received from the agency a copy of an advertisement pasted on a cardboard (R. 39).

The several checks which were mailed in payment of the invoices were mailed to the address of the agency as indicated on the statements (R. 26, 37). They were endorsed, "A & L Advertising Agency" (R. 26, 27, 37), and were deposited in the account at the National Bank of Detroit which had been opened by petitioner and his wife (R. 26, 36, 37).

The postman who delivered mail at the office of A & L Advertising Agency was never informed that the recipients of mail at that address included anyone bearing the name of Hall, Clark, Gregg or any of the other names which appeared on the invoices as salesman (R. 44).

At the close of the Government's case petitioner moved for a judgment of acquittal, which was denied (R. 45-47). So far as appears from the record, no evidence was offered in behalf of petitioner.

## ARGUMENT

Petitioner contends (Pet. 37-38) that his conviction resulted from the process of "predicating inferences upon inferences drawn from circumstantial evidence," in disregard of a rule of law which, he asserts, proscribes that process of reasoning. Actually, however, this case does not raise any problem of the probative quality of inferences from testimonial facts. Since the trial court's charge to the jury is not included in the record, it must be assumed that the court fully and correctly instructed the jury in respect of the scope of inferences that might properly be drawn from circumstantial evidence. It was not the court's function to decide which of the varying inferences should be drawn. *United States v. Valenti*, 134 F. 2d 362, 364 (C.C.A. 2), certiorari denied, 319 U. S. 761. Inferences may arise from a combination of circumstances, even though each circumstance, standing by itself, may seem unimportant. The appellate court's function is to determine "whether there was some competent and substantial evidence before the jury fairly tending to sustain the verdict." *United States v. Socony-Vacuum Oil Company*, 310 U. S. 150, 254; see also *Glasser v. United States*, 315 U. S. 60, 80; *Gorin v. United States*, 312 U. S. 19, 32. In view of the concurrent affirmative findings on this question by the courts below, no occasion is presented for an independent review of the sufficiency of the evidence by this Court. *Kann*

v. *United States*, 323 U. S. 88, 93; *United States v. Johnson*, 319 U. S. 503, 518; *Delaney v. United States*, 263 U. S. 586, 589-590.

The evidence established that petitioner had concocted a scheme to defraud business concerns by billing them for advertisements which they had not ordered, and that the mails were used in furtherance of the scheme. Standing by itself, the sending of one or more invoices for unauthorized advertisements may be attributable to mistake, not inconsistent with the operation of a legitimate business. But the repetition of the incidents (R. 18-20, 23, 25-27, 29-30, 31-32, 37, 40), the fictitious names and dates in the invoices (e.g. R. 18, 25, 27), the deceptive nature of petitioner's operations generally, and the use of a "dummy" newspaper (R. 13-17, 34-36), reflect the sham behind these attempts to collect unearned money.

It is indisputable that the invoices were sent through the mail. The source of the invoices, which bore the name, address, and telephone number of petitioner's agency, was fully established since recipients of the invoices called the designated telephone number and received information about the invoices (R. 19, 39). Moreover, checks in payment of the invoices were mailed to the office address designated on the invoices and were deposited in the bank account which petitioner had opened (R. 26, 36, 37).

Petitioner's participation in the scheme was readily apparent. The registration of the assumed

business name (R. 4, Pet. 12), the rental of the office (R. 4-5), the negotiations with the building manager on behalf of the advertising agency (R. 4-6), the dealings with the telephone company (R. 7-8) and the bank (R. 12-13), and the arrangements with the Abbé Press for the publication of the "dummy" newspaper (R. 13-17, 34-36), afforded ample basis for the jury to find that petitioner knowingly participated in the scheme to defraud. It is clearly inferable that he culled advertisements from other newspapers and traded on the expectation that the advertisers, upon receipt of invoices which were superficially authentic, would assume that they had authorized insertions in the "Daily Ad News," especially when the invoices were corroborated by copies of the advertisements in the "dummy" paper. It was properly within the jury's province to determine that the inferable facts which they elicited from the circumstances proved were sufficient to establish guilt beyond a reasonable doubt. *Curley v. United States*, 160 F. 2d 229 (App. D. C.), certiorari denied, 331 U. S. 837.

**CONCLUSION**

This case does not involve any conflict of decisions or any question meriting further review. We therefore respectfully submit that the petition for a writ of certiorari should be denied.

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December, 1948.